

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAYNA LYNN HARRIS AKA
DAYNA LYNN BREAUX
3345 Magnums Way, #3
Redding, CA 96003

Case No. 2003-96

Registered Nurse License No. 430928

Respondent

DEFAULT DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on **December 29, 2007.**

IT IS SO ORDERED **November 29, 2007**



Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Petition to Revoke the Stay
Order Against:

13 DAYNA LYNN HARRIS,
14 a.k.a. DAYNA LYNN BREAU
3345 Magnums Way, #3
15 Redding, CA 96003

16 Registered Nurse License No. 430928

17 Respondent.
18

Case No. 2003-96

DEFAULT DECISION AND ORDER

[Gov. Code §11520]

19 **FINDINGS OF FACT**

20 1. On or about June 25, 2007, Complainant Ruth Ann Terry, M.P.H., R.N., in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs, filed a Petition to Revoke Stay Order in Case No. 2003-96 against Dayna
23 Lynn Harris, also known as Dayna Lynn Breau ("Respondent"), before the Board of Registered
24 Nursing.

25 2. On or about August 31, 1988, the Board of Registered Nursing ("Board")
26 issued Registered Nurse License Number 430928 to Respondent. Respondent's registered nurse
27 license expired on January 31, 2006.

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1 3. On or about June 29, 2007, Constance A. Ward, an employee of the Office
2 of the Attorney General, served by certified and first class mail a copy of the Petition to Revoke
3 Stay Order in Case No. 2003-96, Statement to Respondent, Notice of Defense, Request for
4 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's
5 address of record with the Board, which was and is 3345 Magnums Way, #3, Redding, CA
6 96003. A copy of the Petition to Revoke Stay Order and the related documents are attached as
7 exhibit A and are incorporated herein by reference. On or about July 6, 2007, Respondent signed
8 the Domestic Return Receipt acknowledging receipt of the above pleadings and documents.

9 4. Service of the Petition to Revoke Stay Order was effective as a matter of
10 law under the provisions of Government Code section 11505, subdivision (c).

11 5. Business and Professions Code section 118 states, in pertinent part:

12 (b) The suspension, expiration, or forfeiture by operation of law of a
13 license issued by a board in the department, or its suspension, forfeiture, or
14 cancellation by order of the board or by order of a court of law, or its surrender
15 without the written consent of the board, shall not, during any period in which it
16 may be renewed, restored, reissued, or reinstated, deprive the board of its
authority to institute or continue a disciplinary proceeding against the licensee
upon any ground provided by law or to enter an order suspending or revoking the
license or otherwise taking disciplinary action against the license on any such
ground.

17 6. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the
19 respondent files a notice of defense, and the notice shall be deemed a specific
20 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

21 7. Respondent failed to file a Notice of Defense within 15 days after service
22 upon her of the Petition to Revoke Stay Order, and therefore waived her right to a hearing on the
23 merits of Petition to Revoke Stay Order.

24 8. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at
26 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent.

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9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibit A, finds that the allegations in the Petition to Revoke Stay Order are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Dayna Lynn Harris, also known as Dayna Lynn Breaux, has subjected her Registered Nurse License Number 430928 to revocation due to her failure to comply with the Board's disciplinary orders set forth in the Decision After Non-Adoption issued by the Board on June 10, 2004, in Case No. 2003-96.

2. A copy of the Petition to Revoke Stay Order and the related documents are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke the stay order and reimpose the order of revocation of Respondent's Registered Nurse License based upon Respondent's failure to submit to an assessment or examination of her physical condition and capability to perform the duties of a registered nurse, and her failure to submit to a mental health examination.

Attachments:

Exhibit A: Petition to Revoke Stay Order and Related Documents

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED NOVEMBER 29, 2007

La Francine W Tate

Exhibit A
Petition to Revoke Stay Order and Related Documents

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke the Stay
Order Against:

13 DAYNA LYNN HARRIS,
14 a.k.a. DAYNA LYNN BREAUX
3345 Magnums Way, #3
15 Redding, CA 96003

16 Registered Nurse License No. 430928

17 Respondent.
18

Case No.

**PETITION TO REVOKE STAY
ORDER**

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Petition to
22 Revoke the Stay Order solely in her official capacity as the Executive Officer of the Board of
23 Registered Nursing ("Board"), Department of Consumer Affairs.

24 2. On or about August 31, 1988, the Board issued Registered Nurse License
25 Number 430928 to Dayna Lynn Harris, also known as Dayna Lynn Breaux ("Respondent").
26 On June 10, 2004, pursuant to the Decision After Non-Adoption issued by the Board in the
27 disciplinary action titled *In the Matter of the Accusation Against Dayna Lynn Harris, aka Dayna*
28 *Lynn Breaux*, Case Number 2003-96, the Board ordered that Respondent's registered nurse

1 license be revoked effective July 10, 2004. The Board further ordered that the revocation was
2 stayed and that Respondent be placed on probation for three years, subject to certain conditions,
3 if she passed a mental and physical examination. A true and correct copy of the Decision After
4 Non-Adoption is attached hereto as exhibit A and incorporated herein by reference.
5 Respondent's registered nurse license expired on January 31, 2006.

6 3. Grounds exist to revoke the stay order and reimpose the order of
7 revocation of Respondent's Registered Nurse License Number 430928 in that she has failed to
8 comply with the Board's disciplinary orders, as follows:

9 **FIRST CAUSE TO REVOKE STAY ORDER**

10 **(Failure to Complete Physical Examination)**

11 4. The Board ordered that prior to being placed on probation, and as a
12 condition precedent to practicing as a Registered Nurse, Respondent, at her expense, shall have a
13 health care practitioner who specializes in chemical dependency treatment and who is a licensed
14 physician, nurse practitioner, or physician assistant, who is approved by the Board before the
15 assessment is performed, submit an assessment of the Respondent's physical condition and
16 capability to perform the duties of a registered nurse. Any assessment shall be submitted in a
17 format acceptable to the Board. Any subsequent assessment shall be performed, if feasible, by
18 the same health care practitioner. If medically determined, a recommended treatment program
19 will be instituted and followed by the respondent with the physician, nurse practitioner, or
20 physician assistant providing written reports to the Board on forms provided by the Board.

21 5. The order staying the revocation of Respondent's registered nurse license
22 is subject to revocation in that Respondent failed to submit to an assessment or examination of
23 her physical condition and capability to perform the duties of a registered nurse.

24 **SECOND CAUSE TO REVOKE STAY ORDER**

25 **(Failure to Complete Mental Health Examination)**

26 6. The Board ordered that prior to being placed on probation, and as a
27 condition precedent to practicing as a registered nurse, Respondent shall have a mental health
28 examination including psychological testing as appropriate to determine her capability to perform

the duties of a registered nurse. The examination will be performed by an examiner who specializes in the treatment of chemical dependencies and who is a psychiatrist, psychologist, or other licensed mental health practitioner approved by the Board. Any subsequent mental examination shall be performed, if feasible, by the same mental health examiner. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the Respondent. Recommendations for treatment, therapy, or counseling made as a result of the mental health examination will be instituted and followed by the Respondent.

7. The order staying the revocation of Respondent's registered nurse license is subject to revocation in that Respondent failed to submit to a mental health examination to determine her capability to perform the duties of a registered nurse.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the stay order and reimposing the order of revocation of Registered Nurse License Number 430928, issued to Dayna Lynn Harris, also known as Dayna Lynn Breaux;

2. Taking such other and further action as deemed necessary and proper.

DATED: 6/25/07

Ruth Ann Terry
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

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EXHIBIT A
DECISION AFTER NON-ADOPTION

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**DAYNA LYNN HARRIS
aka Dayna Lynn Breaux
3345 Magnums Way #3
Redding, CA 96003**

Registered Nurse License No. 430928

Respondent.

Case No. 2003-96

OAH No. N2003040644

DECISION AFTER NON-ADOPTION

On July 22, 2003 in Redding, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Diana Woodward Hagle, Deputy Attorney General.

Respondent, Dayna Lynn Harris, represented herself.

Evidence was received. The record remained open to allow complainant to submit an amended pleading. On September 11, 2003, complainant submitted a post hearing brief in lieu of an amended pleading. Respondent did not respond to the brief. The record was closed and the matter submitted on September 22, 2003.

The Administrative Law Judge issued her Proposed Decision on October 11, 2003. The Board of Registered Nursing ("Board") declined to adopt the Proposed Decision and issued its Notice of Non-Adoption of Proposed Decision and ordering of the hearing transcript on January 2, 2004. On March 26, 2004, the Board issued its Order Fixing Date for Submission of Written Argument. The time for filing written argument in this matter having expired, the entire record, including the transcript of

said hearing and written argument received from the complainant and respondent, having been read and considered by the Board, pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. On October 25, 2002, complainant and petitioner Ruth Ann Terry, M.P.H., R.N., made and filed an Accusation in her official capacity as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California (hereafter the "Complainant").
2. The Accusation alleges violations of Business and Professions Code sections 2761(a), and 2762(e).
3. The Accusation, a blank Notice of Defense, a request for discovery and copies of relevant statutes were served upon respondent. Respondent timely requested a hearing by filing a Notice of Defense. A hearing was held pursuant to Government Code section 11505.
4. On August 31, 1988, the Board issued registered nurse license number 430928 to respondent. At all times relevant the license was in full force and effect. The latest renewal of the license expires on January 31, 2004. There is no history of prior discipline.
5. On February 25, 2000, respondent was employed at the Redding Medical Center in Redding, California, as a registered nurse in the orthopedic unit. On that day, on four occasions during her shift, she signed out tablets of Vicodin for administration to patient M.J. At 0647 hours, respondent signed out two tablets of Vicodin. She charted on the patient's Medical Administration Record (MAR) that she administered the Vicodin at 0645, two minutes earlier than the time she signed out the Vicodin. She failed to document administration of these two tablets in the nurse's notes.

At 0926 hours, respondent signed out two more tablets of Vicodin for patient M.J. Physician's orders called for administration of one to two tablets every four hour to six hours. Respondent charted on the patient's MAR that she administered the Vicodin at 0925 hours, one minute earlier than she had signed out the Vicodin. Administration of Vicodin at 0925 was inconsistent with physician's orders for patient M.J. Respondent also failed to document administration of these two tablets in the nurse's notes.

At 1201 hours, respondent signed out two more tablets of Vicodin for patient M.J. Respondent charted on the patient's MAR that she administered the Vicodin at

1215 hours, fourteen minutes after she signed out the Vicodin. Administration of Vicodin at 1215 hours was inconsistent with physician's orders for patient M.J. Respondent failed to document administration of these two tablets in the nurse's notes.

At 1509 hours, respondent signed out two more tablets of Vicodin for patient M.J. Respondent charted on the patient's MAR that she administered the Vicodin at 1535 hours, twenty four minutes after she signed out the Vicodin. Administration of Vicodin at 1535 hours was inconsistent with physician's orders for patient M.J. Respondent failed to document administration of these two tablets in the nurse's notes.

6. Vicodin is a Schedule III controlled substance as designated by Health and Safety Code section 11056 (e) (4).

7. It is the standard of care in the nursing profession that patient medications be administered pursuant to the physician's orders. Patient M.J.'s physician had directed that nursing staff administer Vicodin at a rate of one to two tablets every four to six hours as needed for pain. Respondent did not comply with these orders on February 25, 2000. She dispensed Vicodin more frequently than the minimum four-hour increments.

8. It is the standard in the nursing profession that a registered nurse administers medication immediately after signing the medications out of the MAR. A nurse is required to write on nursing notes the correct entries on the time medications were administered to a patient. A nurse is required to note in the nursing notes the patient's response to the medication one hour after the medication is administered. Respondent failed to meet these standards in her care of patient M.J. on February 25, 2000.

9. Respondent testified that she may have made charting errors, but that any errors were inadvertent. She explained that her work environment was chaotic and stressful. The hospital was understaffed and patients would track her down asking for their medications. Physical therapists would complain that the patient's medications were wearing off just as they were about to undergo physical therapy. She testified that patient's would forget they had been given medications and that they would yell at her for not giving them more medications. For these reasons, she sometimes found it necessary to carry some medications with her and to administer them "around the clock". She testified she may have administered a medication a few minutes earlier than the scheduled time but never an hour earlier.

10. Respondent testified that her superiors asked her to take a drug test once they discovered her charting errors. She refused because she had just been diagnosed with fibromyalgia and had been prescribed narcotic pain relievers.

11. Respondent had a spotty work history after her termination from Redding Hospital. It was clear from her descriptions of her relationships with her employers that respondent has had great difficulty working with others and is resistant to authority. She stopped working in May of 2002. She has not worked since that time. She needed the time off to adjust to her physical ailments: fibromyalgia, IBS, chronic pain, panic attacks, depression and anxiety.

Respondent testified that she still suffers from these disabilities and is unable to work. She currently takes hormone replacement therapy, Soma (three times per day), Diazapan, Trazadone and Vicodin (one every four hours). She receives state temporary disability payments because she is medically unable to work. She is trying to qualify for social security disability benefits on the basis of permanent disability. She admits that she is not now competent to care for patients.

Respondent testified that she attempted to enter a drug treatment program to get off all of her prescription drugs. However, she was not allowed to enter the program because she wanted to continue taking pain medication while in treatment. Respondent did not admit that she had a problem with unprescribed usage of medications. However, her attempt to enter a drug rehabilitation program, her refusal to take drug tests at Redding hospital, and her inability to produce medical evidence at hearing are strong evidence of an ongoing drug problem.

12. Complainant established that the reasonable costs of investigation and prosecution of this matter were \$7,201.75. Respondent established that she has severe financial difficulties and a limited disability income.

LEGAL CONCLUSIONS

1. Under Business and Professions Code (hereafter "B&P") sections 2750 and 2761(a), the Board of Registered Nursing may take action to revoke, suspend or otherwise take action in relation to the licentiate, when the licentiate has engaged in unprofessional conduct.

2. As set forth in Factual Findings 4 through 9, inclusive, it was established by clear and convincing evidence that respondent engaged in unprofessional conduct by virtue of her violations of physician orders, her failure to document administration of medications in the nursing notes, and her signing out medications well in advance of administration.

3. Under B&P section 2762, "unprofessional conduct" is defined in pertinent part as;

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

4. As set forth in Factual Findings 4 through 9, inclusive, it was established by clear and convincing evidence that respondent falsified or made grossly inconsistent entries in the February 25, 2000, nursing notes of patient M.J. Respondent could not have administered Vicodin to her patient at a time prior to the time she withdrew the medications from the MAR. Her recording of administration times was grossly inconsistent. Respondent's failure to document administration of medications in the nursing notes resulted in a grossly and dangerously incorrect record of the patient's medication consumption.

5. As set forth in Factual Finding 12, the reasonable costs of investigation and prosecution of this matter were \$7,201.75. Respondent does not have the means to pay costs in a lump sum at this time. She did not demonstrate any other grounds under *Zuckerman v. Board of Chiropractic Examiners* (Ca. Supreme Court) 29 Cal. 4th 32 to mitigate these costs.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 430928 issued to Respondent Dayna Lynn Harris is revoked. However, the revocation is stayed, and Respondent is placed on probation for 3 years as set forth in the Probation Conditions, if Respondent is deemed capable of performing the duties and functions of a Registered Nurse as determined by the Physical and Mental Health Examination set forth in Paragraph 1 and 2 below.

(1) PHYSICAL EXAMINATION – As a condition precedent to Respondent practicing as a Registered Nurse, Respondent, at his/her expense, shall have a health care practitioner who specializes in chemical dependency treatment and who is a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Any assessment shall be submitted in a format acceptable to the Board. Any subsequent assessment shall be performed, if feasible, by the same health care practitioner. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

(2) MENTAL HEALTH EXAMINATION – As a condition precedent to respondent practicing as a registered nurse, respondent shall have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by an examiner

who specializes in the treatment of chemical dependencies and who is a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. Any subsequent mental examination shall be performed, if feasible, by the same mental health examiner. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

PROBATION CONDITIONS

Respondent must comply with the following probation conditions if Respondent passes the mental and physical examinations as set forth in paragraph 1 and 2 above.

SEVERABILITY CLAUSE: Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any

employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct,

as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$7,201.75. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - As a condition precedent to Respondent practicing as a Registered Nurse, Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

(15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(16) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(17) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

The effective date of this decision is July 10, 2004.

Dated: June 10, 2004.

Sandra R. Erickson

SANDRA ERICKSON

President

Board of Registered Nursing

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7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2003-96

12 DAYNA LYNN HARRIS
aka Dayna Lynn Breaux
13 20724 Mammoth Drive
Lakehead, California 96051

A C C U S A T I O N

14 Registered Nurse License No. 430928

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1988, the Board of Registered Nursing ("Board")
23 issued registered nurse license number 430928 to Dayna Lynn Harris ("Respondent"). The
24 registered nurse license will expire on January 31, 2004, unless renewed.

25 STATUTORY PROVISIONS

26 3. Section 2750 of the Business and Professions Code ("Code") provides, in
27 pertinent part, that the Board may discipline any licensee, including a licensee holding a
28 //

1 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
2 2750) of the Nursing Practice Act.

3 4. Section 2761 of the Code states, in pertinent part, that the board may take
4 disciplinary action against a certified or licensed nurse or deny an application for a certificate or
5 license for unprofessional conduct.

6 5. Section 2762 of the Code states:

7 "In addition to other acts constituting unprofessional
8 conduct within the meaning of this chapter [the Nursing Practice
9 Act], it is unprofessional conduct for a person licensed under this
chapter to do any of the following:

10

11 (e) Falsify, or make grossly incorrect, grossly inconsistent,
12 or unintelligible entries in any hospital, patient, or other record
pertaining to the substances described in subdivision (a) of this
section."

13 6. Section 125.3 of the Code provides, in pertinent part, that the Board may
14 request the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 7. "DRUGS"

18 "Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate also
19 known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and
20 Safety Code section 11056(e)(4), and 500 mg. acetaminophen per tablet.

21 FIRST CAUSE FOR DISCIPLINE

22 (Falsified, Inconsistent Entries)

23 8. Respondent is subject to disciplinary action under Code section 2761(a) on
24 the grounds of unprofessional conduct as defined in section 2762(e) in that while working at
25 Redding Medical Center, Redding, California, as a registered nurse, she falsified, made grossly
26 incorrect, grossly inconsistent or unintelligible entries in hospital, patient or other records
27 pertaining to Vicodin, a controlled substance, as follows:

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1 a. On February 25, 2000, at 0647 hours, on the Sure Med report, she signed
2 out two tables of Vicodin for administration to patient A, but charted on the patient's medication
3 administration record that she administered the Vicodin at 0645 hours, two minutes prior to
4 removal, and failed to document the administration of medication in the nurse's notes.

5 b. On February 25, 2000, at 0926 hours, on the Sure Med report, she signed
6 out two tablets of Vicodin for administration to patient A, but charted on the patient's medication
7 administration record that she administered the Vicodin at 0925 hours, one minute prior to
8 removal, the administration of Vicodin at this time was inconsistent with the physician's orders
9 which stated one to two tablets of Vicodin every four to six hours, and failed to document the
10 administration of medication in the nurse's notes.

11 c. On February 25, 2000, at 1201 hours, on the Sure Med report, she signed
12 out two tablets of Vicodin for administration to patient A, but charted on the patient's medication
13 administration record that she did not administer the medication until 1215 hours, the
14 administration of Vicodin at this time was inconsistent with the physician's orders which stated
15 one to two tablets of Vicodin every four to six hours, and failed to document the administration
16 of medication in the nurse's notes.

17 d. On February 25, 2000, at 1509 hours, on the Sure Med report, she signed
18 out two tablets of Vicodin for administration to patient A, but charted on the patient's medication
19 administration record that she did not administer the medication until 1535 hours, the
20 administration of Vicodin at this time was inconsistent with the physician's orders which stated
21 one to two tablets of Vicodin every four to six hours, and failed to document the administration
22 of medication on the nurse's notes.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 9. Respondent is subject to disciplinary action under Code section 2761(a) on
26 the grounds of unprofessional conduct as set forth in paragraph 8 above.

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1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending registered nurse license number 430928, issued to
5 Dayna Lynn Harris;

6 2. Ordering Dayna Lynn Harris to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 10/25/02

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12 
13 RUTH ANN TERRY, M.P.H., R.N.
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant
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